(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION NO. 202 /2003

PETITIONER

Smt.Samta Bai,
W/o. Narendra Sahu,
R/o. Vill. Sanaud,
Janpad Panchayat Gurur,
Dist. Durg (C.G.)

Vs.

RESPONDENTS

1. State of Chhattisgarh,
Through Collector,
Dist. Durg (C.G.)

2. Commissioner,
Raipur Division,
Raipur (C.G.)

3. Smt.Kaneshwari Bai Sahu,
Aged 24 years,
W/o. Shri Khemlal Sahu,
R/o. Vill. Sanaud,
Janpad Panchayat Gurur,
Dist. Durg (C.G.)

4. Chief Executive Officer,
Janpad Panchayat Gurur,
Dist. Durg (C.G.)

5. Project Officer,
Women and Child Development
Project,
Gurur,
Dist. Durg (C.G.)

6. Secretary,
Health & Women Child Develop-
ment Committee,
Janpad Panchayat Gurur,
Dist. Durg (C.G.)

7. Secretary,
General Administration Committee
Janpad Panchayat Gurur,
Dist. Durg (C.G.)

8. Gram Panchayat Sanaud,
Through Sarpanch,
Gram Panchayat Sanaud,
Block Development Gurur,
Dist. Durg (C.G.)

P. R. No. 83/03
Presented by Shri Anil Singh
dated 09.01.03

CERTIFIED COPY.
CLERK TO A.G. BILASPUR

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

XI-HC-22

(61)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 202 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

25/08/2004: -

Shri Ashish Shrivastava counsel for the petitioner.

Shri Akhil Agrawal, Panel Lawyer, for the State/respondents 1 and 2.

Shri Vivek Sharma counsel for respondent No.3.

Heard.

By this petition filed under Article 226/227 of the Constitution of India the petitioner has challenged the legality and propriety of the impugned order dated 13/11/2002 (Annexure-P/5) passed in Case No.121/B-121/2001-02 by respondent No.2, Commissioner, Raipur Division, Raipur.

(2) The case of the petitioner is that she is an Angan Badi worker. The Health & women Child Development Committee of Janpad Panchayat Gurur, district Durg selecting the petitioner as worker of the Angan Badi Kendra under village Panchayat Sanaud, has passed a resolution on 18/06/2001. Name of the petitioner is at serial No.9. However, after a month the said Committee passed another resolution (Annexure-P/2) on 18/07/2001 selecting respondent No.3 as Angan Badi Karyakarta in place of the petitioner and pursuant to it respondent No.4, Chief Executive Officer, Janpad Panchayat, Gurur issued

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	appointment order dated 31/07/2001 (Annexure-R/3) in favour of respondent No.3. (3) Being aggrieved by the impugned order dated 31/07/2001 the petitioner filed a complaint (Annexure-P/3) before the Collector, Durg. The Collector exercising the power under Section 85 of the M.P. Panchayat Raj Adhiniyam, 1993 (for short "the Adhiniyam") vide order dated 01/01/2002 (Annexure-P/4) set aside the resolution dated 18/07/2001 passed by the said Committee canceling the appointment of respondent No.3. Respondent No.3 being aggrieved by the order dated 01-01-2002 passed by the Collector, Durg filed an appeal before respondent No.2, Commissioner, Raipur Division, Raipur, under Section 91 of the Adhiniyam. Respondent No.2 however, allowed the appeal vide order dated 13-11-2002 on the ground that of non-compliance of the provisions of Sub Section (2) of Section 85 of the Adhiniyam by the Collector holding that the Collector has not forwarded the order within 10 days to the State Government or the Officer nominated by the State Government. (4) Learned counsel appearing for the petitioner submitted that the Commissioner has found that the provisions of Sub Section (2) of Section 85 of the Adhiniyam have not been complied with by the	

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Collector inasmuch as if the Collector was of the opinion that the order is to be set aside, the same ought to have been forwarded to the State Government or the Officer nominated by the State Government within 10 days.

(5) It would be appropriate to quote Section 85 of the Adhiniyam:

"85. – Power to suspend execution of orders, etc. –

(1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion,-

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized;

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely –

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

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(iii) to cause injury or annoyance to the public or any class or body of persons; or

(iv) to lead to a breach of peace.

(2) Whenever an order is made by the Prescribed Authority under Sub Section (1), it shall forthwith and in no case later than 10 days from the date of order, forward to the State Government or the officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and the State Government or the Officer nominated by it may confirm, set aside, revise or modify the order or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit. "

(6) In the facts and circumstances of the case, the Collector ought to have forwarded the copy of the order dated 01-01-2002 to the State Government or the Officer nominated by it, and the State Government or the Officer nominated by it may confirm, set aside, revise or modify the order or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit provided that no order of the Prescribed Authority passed under Sub Section (1) shall be confirmed, set aside, revised or modified by the State Government or the Officer nominated by it without giving reasonable opportunity of being heard to the said Committee against the proposed order. In the circumstances, when respondent No.3 was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appointed as Angan Badi worker and had joined her duties on 31-07-2001, the said committee and the respondent No.3 ought to have been noticed and heard in the ends of justice before passing the order dated 01-01-2002.

(7) So far as the setting aside the order of the Collector by the Commissioner is concerned, a bare reading of the impugned order goes to show that the Commissioner has set aside the order of the Collector on the technical ground that the Collector failed to comply with the provisions of Section 85(2) of the Adhiniyam, inasmuch as the said order was not forwarded forthwith and in any case not later than 10 days from the date of order to the State Government or the officer nominated by the State Government. For inaction of the Collector or failure of the Collector, a party should not be allowed to suffer. It is not the fault of the party but it was the fault of the Collector and the Commissioner failed to consider this aspect. In that view of the matter, in the opinion of this Court, it is just and proper that the case be referred back to the Collector to consider and pass an order afresh. In case an order under Section 85 of the Adhiniyam is to be made by the prescribed authority, it shall forthwith and in no case later than 10 days from the date of order, forward the same to the State Government or the officer nominated by the State Government for this purpose. Failure

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	to comply the provisions of Section 85 of the Adhiniyam shall be viewed seriously and the Collector to keep this in mind. (8) Subject to what has been stated above, this petition is disposed of. C.C. as per rules.	Sd/- Fakhruddin Judge

Boajesh

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